

ESDRAS K. HARTLEY

IBLA 81-207

Decided August 31, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, in part rejecting portion of noncompetitive oil and gas lease offer for acquired lands. I-12674.

Set aside and remanded.

1. Bureau of Reclamation: Generally -- Oil and Gas Leases: Acquired Lands -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Stipulations

Where an acquired lands noncompetitive oil and gas lease offer is partially rejected on the basis of a recommendation made by the Bureau of Reclamation and merely concurred in by the Forest Service and on appeal the offeror alleges that the present policy of the Bureau of Reclamation is to lease with appropriate stipulations and the record fails to support adequately the original recommendation, the case will be remanded in order to determine whether a lease may issue for such lands.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Esdras K. Hartley has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated November 18, 1980, in part rejecting a portion of appellant's noncompetitive oil and gas lease offer, I-12674, for acquired lands. The lease offer was rejected to the extent that it covered land situated in the SE 1/4 sec. 4 and lot 3 and the NW 1/4 NW 1/4 sec. 10, T. 3 S., R. 46 E., Boise meridian, Bonneville County, Idaho. The decision was based on a recommendation by the Bureau of Reclamation (BuRec), that the land not be leased "because it is not accessible by slant drilling from adjacent property,"

which recommendation was concurred in by the Forest Service, U.S. Department of Agriculture. The lands in question were acquired by the Bureau of Reclamation for the Palisades Reservoir site. Subsequently, these lands were included in the Targhee National Forest by virtue of the Act of August 14, 1958, P.L. 85-651, 72 Stat. 607. <sup>1/</sup>

Appellant's lease offer was filed on September 27, 1976. By letter dated August 7, 1978, BuRec recommended that the lands in question not be leased because it was "not accessible by slant drilling from adjacent non-USBR property." By letter dated November 2, 1978, Forest Service recommended that BLM not lease "portions of Sections 4, 9, and 10" because "the area involved is within the Palisades Reservoir." When requested to clarify that recommendation, Forest Service reiterated BuRec's recommendation and stated that it concurred therein. Letter from Deputy Regional Forester, Forest Service, to Idaho State Director, BLM, dated September 10, 1980.

In his statement of reasons for appeal, appellant contends that he was informed by Gary Carlin, Lands Branch, BuRec, in Boise, Idaho, that "no technical data was relied upon in determining that directional drilling of the subject lands was not feasible," and that current BuRec policy "in lieu of recommending rejection of lease offers, is to recommend acceptance of the lease offer subject to a protective stipulation." Appellant attached a copy of the stipulation. Appellant also argues that Forest Service has not withheld its consent to leasing of the subject lands, but rather, has "simply concurred with the recommendation of the lead agency." Appellant requests that we remand the case to BLM to reconsider whether or not to issue a lease with appropriate stipulations.

[1] Section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1976), provides that oil and gas deposits "may be leased by the Secretary." Accordingly, the Secretary has discretion whether to issue an oil and gas lease for acquired lands. General Crude Oil Co., 18 IBLA 326 (1975); see generally Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965). However, leasing under that Act may only take place with the consent of the agency having jurisdiction over the lands containing the mineral deposit. 30 U.S.C. § 352 (1976); 43 CFR 3109.3-1; see Thomas Connell, 46 IBLA 331 (1980), and cases cited therein. Absent consent, the Department

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<sup>1/</sup> Section 2 of the Act extended the boundaries of the Targhee National Forest to include certain lands, including those in question. Section 4(b)(1) mandated that the Secretary of Agriculture make available to the BuRec "such lands as the Secretary of the Interior finds are needed in connection with the Palisades Reservoir reclamation project." Section 4(b)(2) authorized the Secretary of the Interior to enter into agreements with the Secretary of Agriculture with respect to the relative responsibilities of each for administration of the land.

is without authority to issue an oil and gas lease. Arthur E. Meinhart, 46 IBLA 27 (1980); Frederick L. Smith, 21 IBLA 239 (1975). However, if the lands embraced by an oil and gas lease offer are under the surface jurisdiction of a service or bureau within the Department of the Interior, such as BuRec, the consent of the Secretary of the Interior is necessary under the Act for leasing of the land. Mardam Exploration, Inc., 52 IBLA 296 (1981); Walter W. Sapp, 29 IBLA 219 (1977). The opinion of such a bureau or agency would not be controlling, although its views would be considered carefully. In such a case BLM would be responsible for assembling information and determining on the Department's behalf whether a lease should issue. Esdras K. Hartley, 35 IBLA 137 (1978).

A BLM decision rejecting an oil and gas lease offer will be affirmed provided it sets forth the reasons for doing so and provided the background data and facts of record support the conclusion that the rejection is required in the public interest. Esdras K. Hartley, 54 IBLA 38, 43 (1981), and cases cited therein. The record should also indicate that BLM has considered whether leasing subject to clear and reasonable stipulations would be sufficient to protect the public interest concerns raised by the surface management agency. Id. at 44.

In this case apparently BuRec felt that while a no surface occupancy stipulation might be justified for this land, it would be meaningless because of the lack of feasibility of directional drilling. Forest Service concurred and BLM acted accordingly. However, in light of appellant's assertion that BuRec may be willing to amend its recommendation to permit leasing under a protective stipulation and because there is a lack of evidence in the record to support BuRec's recommendation, we will remand the case to BLM in order to allow it to determine whether leasing may proceed.

The record does not indicate whether the Secretary of Agriculture and the Secretary of Interior have entered into any agreement pursuant to the Act of August 14, 1958, supra, regarding the responsibilities of each for administration of the land. (See n.1, supra.) Therefore, apparently both retain jurisdiction over the land in question.

Section 3 of the Mineral Leasing Act for Acquired Lands, supra, provides in part:

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit \* \* \* and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered \* \* \*.

The same requirement of consent is stated in the regulations at 43 CFR 3109.3-1. While the lands in question are in a national forest, they

are being administered as part of the Palisades Reservoir reclamation project and, therefore, both the consent of the Secretary of the Interior and the Secretary of Agriculture are necessary for leasing. On remand BLM should contact BuRec to ascertain whether the entire lease could issue with appropriate stipulations. Forest Service should also be contacted to elicit its recommendation, which, if negative, should be regarded as controlling.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to BLM for further action not inconsistent herewith.

Bruce R. Harris  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

